

SENATE BILL 214

E1

2lr1540
CF HB 350

By: **Senator Raskin**

Introduced and read first time: January 20, 2012

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 25, 2012

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – De Minimus Quantity**

3 FOR the purpose of establishing a reduced penalty for a person convicted of the use or
4 possession of less than a certain quantity of marijuana; providing that, with a
5 certain exception, the use or possession of less than a certain quantity of
6 marijuana may not be considered a lesser included crime of any other crime;
7 providing that a certain sentence imposed under this Act shall be stayed under
8 certain circumstances without requiring an appeal bond; and generally relating
9 to penalties for possession of marijuana.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Law
12 Section 5–601
13 Annotated Code of Maryland
14 (2002 Volume and 2011 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Criminal Law**

18 5–601.

19 (a) Except as otherwise provided in this title, a person may not:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (1) possess or administer to another a controlled dangerous substance,
2 unless obtained directly or by prescription or order from an authorized provider acting
3 in the course of professional practice; or

4 (2) obtain or attempt to obtain a controlled dangerous substance, or
5 procure or attempt to procure the administration of a controlled dangerous substance
6 by:

7 (i) fraud, deceit, misrepresentation, or subterfuge;

8 (ii) the counterfeiting or alteration of a prescription or a written
9 order;

10 (iii) the concealment of a material fact;

11 (iv) the use of a false name or address;

12 (v) falsely assuming the title of or representing to be a
13 manufacturer, distributor, or authorized provider; or

14 (vi) making, issuing, or presenting a false or counterfeit
15 prescription or written order.

16 (b) Information that is communicated to a physician in an effort to obtain a
17 controlled dangerous substance in violation of this section is not a privileged
18 communication.

19 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a
20 person who violates this section is guilty of a misdemeanor and on conviction is subject
21 to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

22 (2) (I) A person whose violation of this section involves the use or
23 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not
24 exceeding \$1,000 or both.

25 (II) 1. A PERSON CONVICTED OF THE USE OR
26 POSSESSION OF LESS THAN 14 GRAMS OF MARIJUANA IS SUBJECT TO
27 IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 OR
28 BOTH.

29 2. UNLESS SPECIFICALLY CHARGED BY THE STATE,
30 THE USE OR POSSESSION OF LESS THAN 14 GRAMS OF MARIJUANA UNDER
31 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A
32 LESSER INCLUDED CRIME OF ANY OTHER CRIME.

1 **3. IF A PERSON IS CONVICTED UNDER THIS**
2 **SUBPARAGRAPH, THE COURT SHALL STAY ANY SENTENCE IMPOSED WITHOUT**
3 **REQUIRING AN APPEAL BOND:**

4 **A. UNTIL THE TIME FOR FILING AN APPEAL HAS**
5 **EXPIRED; AND**

6 **B. IF AN APPEAL IS FILED, DURING THE PENDENCY**
7 **OF THE APPEAL.**

8 (3) (i) 1. In this paragraph the following words have the
9 meanings indicated.

10 2. “Bona fide physician–patient relationship” means a
11 relationship in which the physician has ongoing responsibility for the assessment,
12 care, and treatment of a patient’s medical condition.

13 3. “Debilitating medical condition” means a chronic or
14 debilitating disease or medical condition or the treatment of a chronic or debilitating
15 disease or medical condition that produces one or more of the following, as documented
16 by a physician with whom the patient has a bona fide physician–patient relationship:

17 A. cachexia or wasting syndrome;

18 B. severe or chronic pain;

19 C. severe nausea;

20 D. seizures;

21 E. severe and persistent muscle spasms; or

22 F. any other condition that is severe and resistant to
23 conventional medicine.

24 (ii) 1. In a prosecution for the use or possession of
25 marijuana, the defendant may introduce and the court shall consider as a mitigating
26 factor any evidence of medical necessity.

27 2. Notwithstanding paragraph (2) of this subsection, if
28 the court finds that the person used or possessed marijuana because of medical
29 necessity, on conviction of a violation of this section, the maximum penalty that the
30 court may impose on the person is a fine not exceeding \$100.

1 (iii) 1. In a prosecution for the use or possession of
2 marijuana under this section, it is an affirmative defense that the defendant used or
3 possessed marijuana because:

4 A. the defendant has a debilitating medical condition
5 that has been diagnosed by a physician with whom the defendant has a bona fide
6 physician–patient relationship;

7 B. the debilitating medical condition is severe and
8 resistant to conventional medicine; and

9 C. marijuana is likely to provide the defendant with
10 therapeutic or palliative relief from the debilitating medical condition.

11 2. The affirmative defense may not be used if the
12 defendant was:

13 A. using marijuana in a public place; or

14 B. in possession of more than 1 ounce of marijuana.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.